

Federal Communications Commission

DA 98-1726

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 98-159
Table of Allotments,)	RM-9290
FM Broadcast Stations.)	
(Wallace, Idaho and Bigfork, Montana))	

NOTICE OF PROPOSED RULE MAKING

Adopted: August 26, 1998

Released: September 4, 1998

Comment Date: October 26, 1998

Reply Comment Date: November 10, 1998

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Alpine Broadcasting, Ltd. ("petitioner"), permittee of Station KSIL(FM), Channel 264C, Wallace, Idaho (BPH-960916MD), requesting the reallocation of Channel 264C from Wallace to Bigfork, Montana, and modification of its authorization accordingly. Petitioner stated its intention to promptly apply for Channel 264C if it is allotted to Bigfork, as requested.

2. Petitioner seeks to invoke the provisions of § 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part* ("*Change of Community MO&O*"), 5 FCC Rcd 7094 (1990). In this regard petitioner advises that the requested reallocation of Channel 264C to Bigfork (pop. 1,100)¹ is mutually exclusive with its present use at Wallace, Idaho (pop. 1,010). The distance between Wallace and the petitioner's specified site at Bigfork is 147.5 kilometers (91 miles) whereas a distance of 290 kilometers (180 miles) is required in this instance.² In further support of the proposal, petitioner advises that Bigfork, located in Flathead County, on the edge of Flathead Lake, and 35 miles south of Glacier National Park, is presently lacking any local aural transmission service. Additionally, petitioner advises

¹Population figure was supplied by the petitioner, based on 1990 U.S. Census data. However, we cannot verify a separate census listing for Bigfork, and will require the petitioner to document in its comments the population it attributes.

²Coordinates at the petitioner's specified site for a transmitter at Bigfork, Montana, are 48-02-45 and 114-00-33. Coordinates at the authorized site of Station KSIL(FM) at Wallace, Idaho, are 47-33-44 and 115-50-33.

that Bigfork offers its residents a diverse range of municipal services, businesses and cultural resources. Moreover, petitioner reports that as Bigfork is a growing center for fine and performing arts, it contains numerous art galleries, museums and craft shops, and hosts many festivals and special events. Further, petitioner advises that Bigfork has local medical professionals, as well as elementary, junior and high schools. Additionally, petitioner reports that Bigfork also has a local newspaper, the Bigfork Eagle.

4. In further support of its proposal, petitioner claims that it would serve the highest allotment ranking, based upon the Commission's allotment priorities as the reallocation would provide Bigfork with its first local aural transmission service without removing the sole local service from Wallace.³ Station KWAL(AM) is licensed to Wallace, and a construction permit has been issued for Station KQWK(FM) to operate on Channel 248C2 at that community.⁴

5. Section 307(b) of the Communications Act of 1934, as amended, requires the Commission to allot channels "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. In this instance we note that Bigfork was deleted as a census designated place in the 1990 U.S. Census. It is identified therein as the Creston-Bigfork Division (county subdivision) of Flathead County⁵ which is attributed with a combined population of 5,147 persons. Therefore, petitioner is requested to document the population figure it attributes to Bigfork. Additionally, petitioner should provide evidence to demonstrate that Bigfork contains other indicia of a community such as social, economic or cultural organizations, municipal services, or governmental units that identify themselves specifically with Bigfork. See, e.g., *Gretna, et al., Florida*, 6 FCC Rcd 633 (1991); *Oak Grove Florida*, 5 FCC Rcd 3774 (1990); *Statenville*,

³The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. (Co-equal weight is given to priorities (2) and (3).) Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). In this instance petitioner recites the Commission's finding that "[There are virtually no populated areas of the country where our higher allotment priorities, such as first reception service, have not been attained. Therefore, as a practical matter, provision of first local aural service is the highest of our allotment priorities which remains in any significant degree unsatisfied." See Modification of FM and TV Authorizations to specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 at 7096 (1990).

⁴Petitioner notes the pendency of a rule making proposal in MM Docket No. 97-203, proposing to change the community of license of the permittee for Station KQWK(FM), Channel 248C2, from Wallace, Idaho, to Lolo, Montana, to operate on Channel 248C3 at Lolo.

⁵Based upon U.S. Census data, county subdivisions are the primary subdivisions of counties and their equivalents for the reporting of decennial census data. They include census county divisions, census subareas, minor civil divisions, and unorganized territories. Montana recognizes census county divisions ("CCD's") which are defined as having no legal function nor are they governmental units. Moreover the boundaries of a CCD are usually delineated to follow visible features and in most cases coincide with census tract or block numbering area boundaries. CCD's are named based on a place, county, or familiar local name that identifies its location.

Georgia, 5 FCC Rcd 2685 (1990); and *East Hemet, et al., California*, 4 FCC Rcd 7895 (1989).

6. A staff engineering review has determined that Bigfork is not within nor near an urbanized area. We recognize that a construction permit (File No. BPH-960916MD) has been issued for Station KSIL(FM), Channel 264C at Wallace, Idaho, but the facility has not been built. However, since the petitioner seeks to relocate its transmitter site, there will be potential gain and loss areas. Therefore, we request the petitioner to provide information reflecting the areas and population that will receive new service, as well as the areas and population that will lose potential service if Channel 264C is reallocated to Bigfork. The study should also identify the reception services that are now available within the gain and loss areas.⁶

7. In consideration of the above, we will propose to reallocate Channel 264C from Wallace, Idaho, to Bigfork, Montana, and modify the authorization for Station KSIL(FM), as requested. The petitioner's modification request is consistent with the provisions of Section 1.420(i) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 264C at Bigfork, Montana.

8. Channel 264C can be allotted to Bigfork, Montana, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules at the petitioner's specified site located 5.2 kilometers (3.2 miles) east of the community.⁷ As Bigfork is located within 320 kilometers (199 miles) of the Canadian border, the Commission must obtain that government's consent to the allotment request.

9. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

City	Channel No.	
	Present	Proposed
Wallace, Idaho	248C2, 264C	248C2 ⁸
Bigfork, Montana	--	264C

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are

⁶Although the Commission has not consistently expressed the same concerns regarding loss areas where the station has not been constructed, each proposal must be viewed in light of our policies and precedent to determine whether the reallocation request would result in a preferential arrangement of allotments. See Change of Community MO&O, supra. See also, Littlefield, Wolfforth and Tahoka, Texas, 12 FCC Rcd 3215 (1997).

⁷The site restriction is required to negate a short spacing to the authorized site of Station KUKL(FM), Channel 210A, Kalispell, Montana, at coordinates 48-10-34 and 114-20-53.

⁸As indicated previously, a proposal is pending to reallocate Channel 248C2 from Wallace to Lolo, Montana, in the context of MM Docket No. 97-203. See Wallace, Idaho and Lolo, Montana, 12 FCC Rcd 13893 (1997).

incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before October 26, 1998, and reply comments on or before November 10, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Theodore D. Kramer, Esq.
Haley Bader & Potts, P.L.C.
4350 North Fairfax Drive, Suite 900
Arlington, VA 22203-1633

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be

filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.